

HIGH COURT FOR THE STATE OF TELANGANA

WRIT PETITION No.902 OF 2023

Between:

Jadhav Upender, S/o. Chinthru Naik
Age : 37 years, Occ : Agriculture and
Sarpanch of Hasnapur Village,
R/o. Hasnapur Village, Utnoor Mandal,
Adilabad District.

.. Petitioner

Vs.

The State of Telangana rep. by its
Rep. by its Principal Secretary,
Social Welfare Department, Secretariat,
Hyderabad & 3 others

.. Respondents

DATE OF THE ORDER PRONOUNCED: **10.03.2023**

1. Whether Reporters of Local newspapers may be allowed to see the judgment? Yes/No
2. Whether the copies of judgment may be marked to Law Reporters/Journals Yes/No
3. Whether his Lordship wishes to see the fair copy of the judgment? Yes/No

*** HON'BLE SRI JUSTICE J. SREENIVAS RAO**

+ WRIT PETITION No.902 OF 2023

% DATED 10TH MARCH, 2023

Jadhav Upender, S/o. Chinthru Naik
Age : 37 years, Occ : Agriculture and
Sarpanch of Hasnapur Village,
R/o. Hasnapur Village, Utnoor Mandal,
Adilabad District.

.. Petitioner

Vs.

\$ The State of Telangana rep. by its
Rep. by its Principal Secretary,
Social Welfare Department, Secretariat,
Hyderabad & 3 others

.. Respondents

<Gist:

>Head Note:

! Counsel for the Petitioner: Sri S. Surender Reddy

^Counsel for Respondents : Govt. Pleader for Social Welfare
Sri Nazeer Khan, Advocate
Govt. Pleader for Revenue.

? CASES REFERRED :

1977 (2) SCC 435
(2015) 5 SCC 423

HON'BLE SRI JUSTICE J. SREENIVAS RAO**W.P. No.902 of 2023****ORDER:**

This writ petition is filed seeking Writ of Certiorari by calling for the records relating to the judgment passed by respondent No.2 in O.S.No.A4/CPC/959/2020, dated 24.12.2022 in granting permanent injunction in favour of respondent No.4 restraining the petitioner, his agents and servants from interfering with the peaceful possession and enjoyment of the respondent No.4 over the land to an extent of 1925 Sq.fts i.e Ac. 1.76 gts (35' x 55') in Sy No. 22/3, situated at Utnoor Village and Mandal, Adilabad District, without conducting proper trial as required under C.P.C and without even deciding the pecuniary jurisdiction, in spite of the direction of this Hon'ble Court in W.P.No.2996 of 2021, dated 19.02.2021, even though the respondent No.2 himself issued the Form-L earlier in respect of the land in Sy.No.22/2 and basing on which the sale deed was registered on 18.08.2011 in favour the petitioner and without having jurisdiction and set aside the judgment passed by the 2nd respondent in O.S.No. A4/CPC/959/2020, dated 24.12.2022 by declaring the same as illegal, arbitrary, abuse of process of law, violation of principles of natural justice and contrary to the rules.

2. Heard Sri S. Surender Reddy, learned counsel for the petitioner, learned Assistant Government Pleader for Social Welfare appearing for respondent Nos.1 to 3 and Sri Nazeer Khan, learned counsel for respondent No.4.

3. Learned counsel for the petitioner submits that the petitioner had purchased the land to an extent of Ac.0.05 gts in Sy.No.22/2, situated at Utnoor Village and Mandal, Adilabad District from Mohammed Toufiquddin on 19.05.2011 through ordinary sale deed and the vendor of the petitioner is a non-tribal and the petitioner belongs to Schedule Tribe and the subject land is situated in Scheduled/Agency Area.

3.1 He further submits that after following the procedure and after issuance of Form-L by the respondent No.2, the Joint Sub-Registrar-I, Adilabad, registered the sale deed on 18.08.2011 *vide* document No.6157/2011 pursuant to the ordinary sale deed dated 19.05.2011 and the revenue authorities have issued pattadar pass book in favour of the petitioner.

3.2 He also submits that respondent No.4 filed a suit A4/CPC/959/2020 seeking Perpetual Injunction on the file of respondent No.2 against the petitioner alleging that she purchased the land to an extent of 1925 sq. fts in Sy.No.22/3,

situated at Utnoor Village and Mandal, Adilabad District from one Durdana Begum through registered sale deed *vide* document No.5538 of 2020, dated 21.07.2020 though there is no land in Sy.No.22/3. In the said suit, the petitioner filed written statement denying the plaint allegations and specifically contending that the suit filed by the respondent No.4 before the respondent No.2 is not maintainable under law on the ground of pecuniary jurisdiction. The respondent No.4 has mentioned in the plaint that the notional value of the suit is Rs.5,000/- and basing upon the said value the Sub-Divisional Magistrate/Revenue Divisional Officer, only has got the jurisdiction to try the said suit, but not respondent No.2. He further submits that as per the provision of Rule 7 of Telangana State Agency Rules, 1924” hereinafter called as **‘Rules’** for brevity, if the value of the suit exceeds Rs.5,000/- only, the respondent No.2 has got the jurisdiction to entertain the suit. Hence, the suit filed by the respondent No.4 before the respondent No.2 is not maintainable.

3.3 He further contended that the respondent No.2 without following the mandatory procedure prescribed under the Agency Rules and the provisions of C.P.C., without framing issues,

without conducting trial and making documents through the witnesses as envisaged under law, passed the impugned Decree and Judgment on 16.01.2021. He also contended that the petitioner earlier filed W.P. No.2996 of 2021 before this Court questioning the orders passed by the respondent No.2 in granting Permanent Injunction on 16.01.2021, and the same was disposed of on 19.02.2023 remitting the case back to respondent No.2 with a direction to consider all the objections raised by the petitioner including pecuniary jurisdiction. The learned counsel contended that respondent No.2 without deciding the pecuniary jurisdiction passed the impugned Judgment and Decree and the same is contrary to the orders passed by this Court in the above said writ petition.

3.4 In support of his contentions, he relied upon the judgment (1) **State of Madhya Pradesh Vs. Babu Lal and others**¹,

4. *Per contra*, the learned Assistant Government Pleader for Social Welfare submits that respondent No.2 after following the due procedure, and after considering the contentions of both the parties, oral and documentary evidence on record, decreed

¹ 1977 (2) SCC 435

the suit by giving cogent findings by its Judgment and Decree dated 24.12.2022 and the same is in accordance with law. She further submits that, as per the Rule 49 of Agency Rules, 1924, the petitioner ought to have filed appeal against the Judgment and Decree passed by the respondent No.2 dated 24.12.2022. Hence, the writ petition filed by the petitioner by invoking the jurisdiction of this Court under Article 226 of Constitution of India is not maintainable under law.

5. The learned counsel Sri Nazeer Khan appearing for respondent No.4 submits that when the petitioner is trying to interfere with the peaceful possession and enjoyment of the suit schedule property, she filed the suit vide O.S. No.A4/CPC/959/2020 on the file of respondent No.2 seeking Perpetual Injunction. Respondent No.2 after following the due procedure as contemplated under law and after considering the oral and documentary evidence adduced by both the parties, viz., PWs.1 to 4, Exs.A.1 to A.20, and DWs. 1 & 2, Exs.B.1 to B.4 and also after hearing both the parties decreed the suit by giving cogent findings by its Judgment and Decree dated 24.12.2022. He vehemently contended that as against the Decree and Judgment passed by the respondent No.2 as per the provisions of the Rule 49 of T.S. Agency Rules, 1924 regular appeal is maintainable

and the writ petition filed by the petitioner is not maintainable under law and the same is liable to be dismissed on the ground of maintainability alone. He further submits that the suit filed by the respondent No.4 before the respondent No.2 is very much maintainable under Rules and the said Court is having pecuniary jurisdiction to entertain the suit. The respondent No.4 specifically mentioned the valuation of the suit at *Para No.13 of the plaint that "the plaintiff values the suit for injunction as Rs.70,000/- and notional value comes to Rs.5,000/-"*. He further submits that the notional value has taken for the purpose of payment of Court fee only, though the respondent No.4 valued the suit for claiming Permanent Injunction at Rs.70,000/-. Hence, as per Rule 7 of the Agency Rules, the value of the suit if exceeds more than Rs.5,000/-, respondent No.2 is having jurisdiction to entertain the suit. Accordingly, the respondent No.2 has rightly entertained the suit and passed the Judgment and Decree after following due procedure as contemplated under law.

5.1 In support of his contention, he relied upon the judgments in (i) 2009 (1) ALD 297, (ii) 2009 (1) ALD 306, (iii) AIR 1996 Orissa High Court 172, (iv) 1981 SC 1683, (v) AIR

2007 Himachal Pradesh, 52, (vi) AIR 1992 Gowhati High Court, 91.

6. Now the points arise for consideration are as under:

- (1) Whether the writ petition filed by the petitioner is maintainable under Article 226 of Constitution of India, when the remedy of statutory appeal is provided under Rule 49 of Agency Rules, 1924?
- (2) Whether the petitioner is entitled for any relief as sought in the writ petition?

POINT NOS.1 & 2

7. Having considered the rival submissions made by the respective parties and after going through the material available on record, it clearly reveals that respondent No.4 filed suit under Order VII Rule 1 and 2 of CPC R/w. Rule 14 of Telangana State Agency Rules, 1924 on the file of respondent No.2 seeking perpetual injunction restraining the petitioner herein from interfering with the suit schedule property i.e. Sy.No.22/3, plot No.1, admeasuring 35' X 55' = 1925 sq.fts (1.76 guntas) situated at Utnoor Village and Mandal, Adilabad District. In the said suit the petitioner filed written statement denying the averments of the plaint. On behalf of the respondent No.4, PWs.1 to 4 were examined and Exs.A.1 to A.20 documents were marked. On behalf of the petitioner herein, DWs.1 and 2 were examined and Exs.B.1 to B.14 documents

were marked. The respondent No.2 after considering the averments made by the parties, oral and documentary evidence on record and after hearing the parties, decreed the suit and granted permanent injunction in favour of the respondent No.4 by Judgment and Decree dated 24.12.2022 by giving cogent findings holding that the plaintiff is entitled for grant of perpetual injunction.

7.1 As per the provisions of Rule 49 of Telangana State Agency Rules, 1924, regular appeal is maintainable against the Judgment and Decree passed by the respondent No.2. The petitioner without availing the remedy of appeal as provided under statute filed the writ petition invoking the jurisdiction of this Court under Article 226 of Constitution of India and the same is not maintainable.

7.2 The main contention of the learned counsel for the petitioner is that the suit filed by the respondent No.4 before the respondent No.2 is not maintainable on the ground of pecuniary jurisdiction as the value of the suit is below Rs.5,000/- and in spite of specific objection raised by the petitioner about maintainability of the suit in the written statement, respondent No.2 without giving any finding passed the Judgment and

Decree. The other contention raised by the learned counsel for the petitioner is that in W.P. No.2996 of 2022, this Court directed the respondent No.2 to consider all the objections raised by the petitioner including pecuniary jurisdiction while disposing of the writ petition on 19.02.2021, but the respondent No.2 without deciding the jurisdiction aspect passed the impugned decree.

8. To answer the above contentions raised by the learned counsel for the petitioner, it is very much relevant to extract Para No.13 of the plaint in the said suit which reads as follows:

“13. That the suit is for perpetual injunction. The Plaintiff values the relief of injunction at Rs.70,000/- and notional value comes to Rs.5000/- a court fee of Rs.418/- is paid under section 26 (1) (c) Article-I and Schedule I of the TSCF and S.V Act 1956 which is proper and sufficient and the court fee is deposited in SEI vide A/c No. of this Court on 23.09.2020 which is proper and sufficient”.

9. According to the averments of the plaint, it clearly shows that the value of the suit for claiming relief of Perpetual Injunction as mentioned Rs.70,000/- and for the purpose of payment of Court fee as per TSCF and S.V Act 1956, the respondent No.4 has taken notional value at Rs.5,000/-. The learned counsel for the respondent No.4 has rightly contended

that the value of the suit for claiming perpetual injunction was mentioned as Rs.70,000/- and the notional value has taken by the respondent No.4 for the purpose of payment of Court fee only. The value of the suit is more than Rs.5,000/-. Hence, the suit filed by respondent No.4 before respondent No.2 is very much maintainable under law. Insofar as the other contention of the learned counsel for the petitioner that the respondent No.2 without framing the particular issue in respect of pecuniary jurisdiction has passed the decree is concerned, it is also not tenable on the ground that the record discloses that the petitioner has not taken any steps to file draft issues as required under C.P.C praying the respondent No.2 to frame such issue. On the other hand, the petitioner proceeded with the matter on merits as respondent No.2 is having jurisdiction to adjudicate the suit. After inviting the judgment and decree on merits the petitioner is not entitled to raise such objection merely because the respondent No.2 has not framed the particular issue. As already stated *supra*, as per the provisions of Rule 7 of T.S. Agency Rules, the value of the suit is more than Rs.5,000/- and respondent No.2 is having jurisdiction to entertain the suit and rightly adjudicated the matter. Insofar as the other contention raised by the petitioner that the

respondent No.2 without following the mandatory procedure prescribed under the Civil Rules of Practice passed the Judgment and Decree without examining any persons as witnesses is concerned, the impugned Judgment passed by the respondent No.2 clearly shows that on behalf of respondent No.4, PWs.1 to 4 were examined and Exs.A.1 to A.20 documents were marked and on behalf of petitioner DWs.1 and 2 were examined and Exs.B.1 to B.14 documents were marked. It further shows that the counsel for the petitioner before the Court below cross-examined the respondent's witnesses. Hence, the grounds raised by the petitioner, is contrary to the material evidence on record.

10. The judgment relied by the learned counsel for the petitioner In **State of Madhya Pradesh Versus Babu Lal and others** *supra* wherein the Hon'ble Supreme Court held as under:

"5. One of the principles on which Certiorari is issued is where the Court Acts illegally and there is error on the face of record. If the Court usurps the jurisdiction, the record is corrected by Certiorari. This case is a glaring instance of such violation of law. The High Court was in error in not issuing Writ of Certiorari".

10.1 The principle laid down by the Hon'ble Supreme Court in the above judgment is not applicable to the facts and circumstances of the case on hand, on the ground that admittedly, as per the provisions of Rule 7 of T.S. Agency Rules, respondent No.2 is having jurisdiction to entertain the suit and the said Court after following the due procedure as contemplated under the Telangana State Agency Rules & after following the procedure contemplated under the provisions of C.P.C, after considering the oral and documentary evidence on record, and also after hearing both the parties has passed the impugned judgment by giving cogent findings.

11. The judgments relied by the learned counsel for the respondent No.4 are not applicable to the facts and circumstances of the case, especially in view of the law laid down by the Hon'ble Apex Court in the case of **Radhey Shyam v. Chhabi Nath, (2015) 5 SCC 423**, after analyzing previous decisions held that Writ Petitions under Article 226 challenging the Judicial Orders are not maintainable.

12. It is already stated *supra* that the provisions of Rule 49 of Agency Rules clearly envisages that from every Original Suit, Agent to the State an appeal shall lie. In view of the specific statutory provision, the writ petition filed by the petitioner

questioning the impugned Judgment and Decree passed by the respondent No.2 is not maintainable under law especially invoking the extraordinary jurisdiction of this Court under Article 226 of Constitution of India.

13. In view of the foregoing reasons, the writ petition filed by the petitioner is not maintainable to invoke the jurisdiction of this Court under Article 226 of Constitution of India. Without going into merits of the case, the writ petition is liable to be dismissed on the ground of maintainability alone. Point Nos. 1 and 2 are answered in favour of the respondents against the petitioner.

14. Accordingly, the writ petition is dismissed. However, liberty is given to the petitioner to avail the remedy of appeal as provided under Rules. There shall be no order as to costs.

Miscellaneous petitions, if any, pending in this writ petition, shall stand closed.

JUSTICE J. SREENIVAS RAO

10th March, 2023

Note

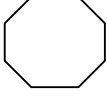
1. After pronouncement of the order in W.P. No.902 of 2023, the learned counsel for the petitioner made a request to direct the Office to return the Certified Copy of the Judgment passed by respondent No.2 in O.S. No.A4/CPC/959/2020, dated 24.12.2022 filed along with the Writ Petition for the purpose of filing appeal.

In view of the said submission, Office is directed to return the same, as per procedure.

2. L.R. Copy to be marked : **'Yes'**.

B/o.
Skj/Psw.

HON'BLE SRI JUSTICE J. SREENIVAS RAO



WRIT PETITION No.902 OF 2023

Date : 10-03-2023

Note

L.R. Copy to be marked : **'Yes'**.

B/o.
Skj/Psw

